IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.

S. B. CIVIL MISC. APPEAL NO. 911/1996

SMT. KAMLESH
v
BHUGRA MAL & ORS.

Date of Judgment: 19th NOVEMBER, 2007

Hon'ble Mr. Justice R. S. Chauhan

Mr. Vinay Mathur for the appellant.
Mr. Tripurari Sharma for the respondents.

By Court:

The appellant has challenged the award dated 4.12.95 passed by the Motor Accident Claims Tribunal, Kishangarh (Ajmer) ('the Tribunal', for short), whereby the learned Tribunal has granted a compensation of Rs. 20,000/- alongwith interest @ 10% per annum for the injuries sustained by the appellant.

The brief facts of the case are that on 10.9.83 when the appellant was travelling in a bus, bearing Registration No. RSI 9505, a truck, bearing Registration No. RRN 9251, being driven rashly and negligently dashed into the bus. Consequently, the appellant suffered two fractures in her right leg, seven simple injuries besides suffering minor abrasions on her body. Alongwith other claimants, the appellant filed her claimant petition before the learned Tribunal.

In order to substantiate her case, the appellant examined three witnesses and submitted a number of documents. The non-claimants examined three witnesses. After going through the oral and documentary evidence, the learned Tribunal granted a compensation as aforementioned. Since the appellant is aggrieved by the meagre amount of compensation, she has filed the present appeal for enhancement.

Mr. Vinay Mathur, the learned counsel for the appellant, has contended firstly : that according to the certificate issued by the Orthopedic doctor the appellant had suffered 25% of disability and her right leg was shortened by 1/2" due to the accident. Although the said certificate was exhibited, but the fact that her leg has been shortened has not been accepted by the learned Tribunal. Secondly, considering the fact that the appellant had suffered two grievous injuries on her leg, a compensation of Rs. 7,000/- is too little. Thirdly, that the compensation of Rs. 7,000/- for simple injuries is also unreasonable. Lastly, that an amount of Rs. 3,000/- under the category of "pain and agony" is certainly too little as the appellant is bound to suffer physical and mental frustration due to the fact that her leg has been shortened by 1/2".

On the other hand, Mr. Tripurari Sharma, the learned counsel for respondent No.5, has argued that amount of

compensation is reasonable considering the fact that the accident had occurred in the year 1983 and the award was passed in the year 1995. Moreover, since the learned Tribunal has granted 10% interest from the date of filing of the claim petition, the appellant has received almost Rs. 40,000/- by way of compensation. According to the learned counsel the said amount is more than just and reasonable.

We have heard both the learned counsel and have perused the impugned award.

A bare perusal of the testimony of the appellant, as AW1, clearly reveals that in her testimony she nowhere claims that her leg has been shortened by 1/2" due to the alleged accident. Moreover, the concerning doctor has not been produced in the witness box to prove the certificate issued by him. Thus, the learned Tribunal is justified in rejecting the contention that the appellant's leg has been shortened by 1/2" due to the said accident.

Although the monetary compensation cannot restore the body to its prestine form, but monetary compensation should try to ameliorate the pain, agony and frustration suffered by a person. For, the injuries leave an undeniable impression on the physique and psyche of the injured. In the case of R.D. Hattangadi Vs. Pest Control (India) Pvt. Ltd. & Ors. (1995 ACJ 366), the Hon'ble Supreme

Court had dealt with concept of pecuniary and non-pecuniary losses suffered by an injured person and has held thus :

> "So far as non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life." While granting a lump sum of compensation, the learned Tribunal should have kept these factors in mind. However, a bare perusal of the impugned award clearly reveals that the learned Tribunal has ignored these factors in toto. Hence, the compensation awarded by the learned Tribunal is neither just nor reasonable."

In the present case the appellant had suffered two grievous injuries on her right leg and had suffered seven simple injuries. She had been treated both at Ajmer and at Jaipur hospitals. Moreover, she was in the hospital for about twenty-two days. Considering the fact that she would have to suffer pain and agony, frustration and inconvenience for the rest of her life due to the accident, we deem it appropriate to modify the impugned award and to enhance the amount of compensation from Rs. 20,000/- to Rs. 35,000/-.

In the result we allow this appeal and modify the impugned award by increasing the amount of compensation from Rs. 20,000/- to Rs. 35,000/-The enhanced amount of compensation shall be paid alongwith interest @ 6% per annum from the date of the filing of the appeal i.e. from 29.2.96. The Tribunal is directed to recover the amount from the Insurance Company within a period of two months and to disburse the same to the claimants within a period of one month, thereafter.

(R.S. CHAUHAN) J.

MRG.